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MOSAIC TILE SUPPLIES, LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SUNSET MOUNTAINS, INC., d/b/a
MOSAIC TILE MARKET, a California
corporation

Plaintiff,

vs.

MOSAIC TILE SUPPLIES, LLC, a Texas
limited liability company,

Defendant.

Case No.: C-07-4007 (PJH)

**DEFENDANT MOSAIC TILE SUPPLIES,
LLC'S ANSWER TO THE FIRST
AMENDED COMPLAINT**

JUDGE: HON. PHYLLIS J. HAMILTON

COMES NOW Defendant Mosaic Tile Supplies, LLC, ("Mosaic Tile") by and through its attorneys, and alleges as its Answer to Plaintiff Sunset Mountains, Inc.'s ("Sunset") First Amended Complaint For Declaratory Judgment and Damages ("Complaint"), on information and belief, the following:

1. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 1 in the form alleged and leaves all questions of fact to the trier of fact and all questions of law to the Court, except admits that Sunset's Complaint seeks injunctive relief and damages for misrepresentation of copyright claims under the Digital Millennium Copyright Act ("DMCA"); for Intentional Interference with Prospective Business Relationships; for unfair competition

1 under Cal. Bus. & Prof. Code §§ 17200 *et seq.*; for unfair competition arising under the common
2 law of the state of California; and for declaratory relief.

3 **PARTIES**

4 2. Mosaic Tile lacks sufficient knowledge and information to either admit or deny
5 the allegations set forth by Plaintiff in Paragraph 2 and therefore denies them.

6 3. The allegations set forth by Plaintiff in Paragraph 3 are admitted.

7 **JURISDICTION**

8 4. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 4 in the
9 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
10 Court.

11 5. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 5 in the
12 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
13 Court.

14 **INTRA-DISTRICT ASSIGNMENT**

15 6. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 6 in the
16 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
17 Court.

18 **MOSAIC'S BUSINESS**

19 7. Mosaic Tile lacks sufficient knowledge and information to either admit or deny
20 the allegations set forth by Plaintiff in Paragraph 7 and therefore denies them.

21 8. Mosaic Tile lacks sufficient knowledge and information to either admit or deny
22 the allegations set forth by Plaintiff in Paragraph 8 and therefore denies them.

23 9. Mosaic Tile lacks sufficient knowledge and information to either admit or deny
24 the allegations set forth by Plaintiff in Paragraph 9 and therefore denies them.

25 10. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 10 in the
26 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
27 Court.

1 11. Mosaic Tile lacks sufficient knowledge and information to either admit or deny
2 the allegations set forth by Plaintiff in Paragraph 11 and therefore denies them.

3 **DEFENDANT’S THREATS AND CLAIMS**

4 12. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 12 in the
5 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
6 Court.

7 13. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 13.

8 14. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 14.

9 15. The allegations set forth in Paragraph 15 are admitted.

10 16. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 16 in the
11 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
12 Court.

13 17. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 17 in the
14 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
15 Court.

16 18. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 18.

17 19. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 19 in the
18 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
19 Court, except Mosaic Tile admits that a telephone conference took place between the parties on
20 or about January 3, 2007.

21 20. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 20 in the
22 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
23 Court, except Mosaic Tile admits that Sunset confirmed that it did acquire tile from other
24 suppliers during the January 3, 2007 telephone conference.

25 21. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 21 in the
26 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
27 Court.
28

1 22. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 22 in the
2 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
3 Court.

4 23. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 23 in the
5 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
6 Court, except Mosaic Tile admits that a telephone conference took place on January 25, 2007
7 between the parties.

8 24. The allegations set forth in Paragraph 24 are admitted.

9 25. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 25 in the
10 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
11 Court, except Mosaic Tile admits that it sent an email to Sunset on January 30, 2007.

12 26. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 26 in the
13 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
14 Court, except Mosaic Tile admits that it received an email from Sunset on January 31, 2007.

15 27. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 27 in the
16 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
17 Court, except Mosaic Tile admits that it sent an email to Sunset on February 2, 2007.

18 28. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 28 in the
19 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
20 Court, except Mosaic Tile admits that it received an email from Sunset on February 5, 2007.

21 29. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 29 in the
22 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
23 Court, except admits that Mosaic Tile's counsel sent a letter to Sunset on February 6, 2007.

24 30. The allegations set forth in Paragraph 30 are admitted.

25 31. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 31 in the
26 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
27 Court, except Mosaic Tile admits that the DMCA Notice was issued on a Friday.
28

1 32. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 32 in the
2 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
3 Court.

4 33. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 33 in the
5 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
6 Court.

7 34. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 34 in the
8 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
9 Court, except that Mosaic Tile admits that through former counsel an email was sent on February
10 25, 2007 to Sunset's former counsel.

11 35. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 35 in the
12 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
13 Court, except admits that Mosaic Tile's former counsel contacted Sunset on March 8, 2007.

14 36. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 36.

15 37. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 37 in the
16 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
17 Court, except admits that current counsel for Mosaic Tile did send a letter to Sunset's former
18 counsel on June 7, 2007.

19 38. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 38 in the
20 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
21 Court.

22 39. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 39 in the
23 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
24 Court, except admits that Sunset's former counsel responded to Mosaic Tile counsel's letter of
25 June 7, 2007 on July 2, 2007.

26 40. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 40 in the
27 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
28

1 Court, except admits that Mosaic Tile's counsel sent letters to Sunset's former counsel on July
2 24, 2007 and July 31, 2007.

3 41. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 41 in the
4 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
5 Court, except admits that Sunset's former counsel sent Mosaic Tile's counsel a letter on July 31,
6 2007.

7 42. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 42 in the
8 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
9 Court, except admits that Mosaic Tile sent Sunset's former counsel a letter on August 1, 2007.

10 43. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 43.

11 44. The allegations set forth in Paragraph 44 are admitted.

12 45. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 45 in the
13 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
14 Court.

15 **ANSWER TO PLAINTIFF'S FIRST CLAIM FOR RELIEF**

16 46. Mosaic Tile repeats, reiterates, and realleges each of the responses contained in
17 Paragraphs 1 through 45 and incorporates those responses by reference as if set forth in full.

18 47. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 47 in the
19 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
20 Court.

21 48. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 48.

22 49. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 49.

23 50. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 50 in the
24 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
25 Court.

26 51. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 51 in the
27 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
28 Court.

ANSWER TO PLAINTIFF'S SECOND CLAIM FOR RELIEF

52. Mosaic Tile repeats, reiterates, and realleges the responses to allegations set forth in paragraphs 1 through 51 and incorporates those responses by reference as if set forth in full.

53. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 53 in the form alleged and leaves all questions of fact to the trier of fact and all questions of law to the Court.

54. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 54.

55. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 55 in the form alleged and leaves all questions of fact to the trier of fact and all questions of law to the Court.

56. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 56 in the form alleged and leaves all questions of fact to the trier of fact and all questions of law to the Court.

ANSWER TO PLAINTIFF'S THIRD CLAIM FOR RELIEF

57. Mosaic Tile repeats, reiterates, and realleges the responses to allegations set forth in paragraphs 1 through 56 and incorporates those responses by reference as if set forth in full.

58. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 58.

59. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 59.

60. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 60.

61. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 61.

ANSWER TO PLAINTIFF'S FOURTH CLAIM FOR RELIEF

62. Mosaic Tile repeats, reiterates, and realleges the responses to allegations set forth in paragraphs 1 through 61 and incorporates those responses by reference as if set forth in full.

63. Mosaic Tile lacks sufficient knowledge and information to either admit or deny the allegations set forth by Plaintiff in Paragraph 63 and therefore denies them.

64. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 64 in the form alleged and leaves all questions of fact to the trier of fact and all questions of law to the Court.

65. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 65.

66. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 66.

67. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 67.

68. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 68.

ANSWER TO PLAINTIFF'S FIFTH CLAIM FOR RELIEF

69. Mosaic Tile repeats, reiterates, and realleges the responses to allegations set forth in paragraphs 1 through 68 and incorporates those responses by reference as if set forth in full.

70. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 70.

71. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 71.

72. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 72.

73. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 73.

74. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 74 in the form alleged and leaves all questions of fact to the trier of fact and all questions of law to the Court.

75. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 75.

ANSWER TO PLAINTIFF'S SIXTH CLAIM FOR RELIEF

76. Mosaic Tile repeats, reiterates, and realleges the responses to allegations set forth in paragraphs 1 through 75 and incorporates those responses by reference as if set forth in full.

77. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 77.

78. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 78.

79. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 79 in the form alleged and leaves all questions of fact to the trier of fact and all questions of law to the Court.

ANSWER TO PLAINTIFF'S SEVENTH CLAIM FOR RELIEF

80. Mosaic Tile repeats, reiterates, and realleges the responses to allegations set forth in paragraphs 1 through 79 and incorporates those responses by reference as if set forth in full.

81. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 81.

82. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 82.

1 83. Mosaic Tile denies the allegations set forth by the Plaintiff in Paragraph 83 in the
2 form alleged and leaves all questions of fact to the trier of fact and all questions of law to the
3 Court.

4 **AFFIRMATIVE DEFENSES**

5 **First Affirmative Defense**

6 84. Plaintiff's causes of action fail to state a claim upon which relief may be granted.
7

8 **Second Affirmative Defense**

9 85. Plaintiff failed to mitigate its damages, if any.
10

11 **Third Affirmative Defense**

12 86. Plaintiff's own conduct contributed to and/or caused the injuries of which it now
13 complains, and Plaintiff voluntarily assumed the risk of its own conduct.
14

15 **Fourth Affirmative Defense**

16 87. Plaintiff's causes of action are barred by Plaintiff's own conduct of waiver and
17 estoppel.

18 **Fifth Affirmative Defense**

19 88. Plaintiff's causes of action are barred by the doctrine of unclean hands.
20

21 **Sixth Affirmative Defense**

22 89. No act or omission of or attributable to the Defendant was a substantial factor in
23 bringing about the occurrences alleged in the Complaint or any damage or loss sustained by
24 Plaintiff, nor was any act or omission of, or attributable to, the Defendant, a contributing cause
25 thereof, and any alleged acts or omissions of, or attributable to, the Defendant were superseded
26 by the acts or omissions of Plaintiff or of other persons, which acts or omissions of Plaintiff and
27 of other persons were the independent, intervening and proximate causes of the occurrences
28 alleged in the Complaint.

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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